

Exhibit 3

1 ** CONFIDENTIAL TRANSCRIPT - ATTORNEYS' EYES ONLY **

2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
4 WESTERN DIVISION

5 SONY CORPORATION, A Japanese)

6 corporation,)

7)
8 Plaintiff,)

9 vs.)

10) SACV-08-01135

11 VIZIO, INC.,) RGK (FMOx)

12) PAGES 1 - 49

13 Defendant.)

14)
15 _____)

16
17 TELEPHONIC MEET AND CONFER
18 LOS ANGELES, CALIFORNIA
19 FRIDAY, JULY 17, 2009

20
21
22 REPORTED BY:

23 LESLIE L. WHITE

24 CSR NO. 4148

25 JOB NO.: 23822

1 ** CONFIDENTIAL TRANSCRIPT - ATTORNEYS' EYES ONLY **

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3
4 JULY 17, 2009

5 12:05 p.m.

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7
8 Telephonic Meet and Confer held at
9 555 South Flower Street, Fiftieth Floor,
10 Los Angeles, California, before Leslie L.
11 White, CSR No. 4148.

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2 A P P E A R A N C E S:

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19 BY: THOMAS PEASE, ESQ.

20 (Present telephonically)

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10 PETER KLIVENS, ESQ.

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24 BY: RYAN McCRUM, ESQ.

25 (Present telephonically)

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2 I N D E X

3
4 TELEPHONIC MEET AND CONFER

5
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7
8
9 E X H I B I T S

10 (NONE OFFERED)

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2 LOS ANGELES, CALIFORNIA; FRIDAY, JULY 17, 2009

3 12:05 p.m.

4 -o0o-

5 MR. McCRUM: Let's go on the record.

6 It's Ryan McCrum from Jones Day
7 Cleveland on behalf of Vizio.

8 MR. CORR: And Steve Corr from Jones Day
9 Los Angeles on behalf Vizio.

10 MR. MILLER: Here in L.A. it's
11 Rory Miller from the Los Angeles office of
12 Quinn Emanuel on behalf of Sony.

13 MR. PEASE: And here in New York Tom
14 Pease from Quinn Emanuel, also on behalf of
15 Sony.

16 MR. KENNEDY: Todd Kennedy in
17 San Francisco, Quinn Emanuel, on behalf of
18 Sony.

19 MR. KLIVENS: And also Peter Klivens,
20 San Francisco Quinn Emanuel on behalf Sony.

21 MR. McCRUM: Was that everyone?

22 MR. CORR: That's everyone, Ryan.

23 MR. McCRUM: This is Ryan McCrum. Why
24 don't we start at the top here. I don't
25 anticipate today going very long, but that's

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2 usually my hope, and they tend to go longer
3 than I would expect.

4 But why don't we go ahead.
5 The first item in the letters that we
6 exchanged is interrogatory No. 1. I don't
7 think we need to spend a lot of time on this.

8 I got your letter, Todd, from last
9 night. Vizio is of the position that the
10 parties are at an impasse on this. Obviously
11 you folks disagree.

12 I don't know what else to say on
13 this. Vizio obviously feels like we have been
14 around in circles on this a number of times,
15 and that the parties are at an impasse, and
16 there is not much also to say on this.

17 MR. PEASE: Ryan, this is Tom. I don't
18 understand how you can say we're at an impasse
19 when we have done everything you have asked us
20 to do. You know, we have now supplemented
21 that interrogatory response twice, and agreed
22 to supplement it again on, I believe
23 July 31st.

24 Our first supplement you complained
25 that additional information should be set

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2 forth, based on the User Manuals. We went
3 back and supplemented information to include
4 information that was in the User Manuals.

5 We also, at your request, went back
6 and actually pared down the information
7 because you said it was unreadable, and, you
8 know, used "See Also" type sites to additional
9 User Manuals, rather than quoting them and
10 cutting and pasting them into the document.
11 We did that.

12 We also went back, at your request,
13 and included information that has been set
14 forth in Claim Charts that have been shown to
15 Vizio before the lawsuit was filed.

16 And now you have produced -- Vizio,
17 that is -- has produced Service Manuals, and
18 we have agreed to supplement on July 31st to
19 include the information set forth in the
20 Service Manuals.

21 We have also told you that once we
22 get from Vizio and the third parties the
23 additional information that is clearly
24 responsive to our requests -- and that
25 includes firm ware, chip specifications and

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2 the like -- we will again supplement to take
3 into account that additional information.

4 So when you say we're at an impasse,
5 it's hard for us to know what you mean because
6 we have gone back and done everything that you
7 have requested, on the time tables that you
8 agreed on.

9 And so, you know, you're going to be
10 getting additional information in the charts
11 relating to the Service Manuals on July 31st,
12 and, you know, depending on when we get the
13 additional information we have requested, we
14 will go back and supplement to include that
15 information.

16 You know, I am not going to go into
17 the deficiencies of Vizio's production at this
18 point, but we have noticed that after we
19 negotiated a Protective Order to include
20 specific source code protections, you know,
21 we're now months into this case, months since
22 we served our discovery requests, and we
23 haven't seen any source code of any kind from
24 Vizio.

25 Now, we looked at your documents,

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2 and we have seen documents that show that
3 Vizio engineers do, in fact, have access to
4 source code and firm ware and the like, and
5 you haven't produced it.

6 We also haven't seen a single chip
7 specification. You know, is it Vizio's
8 position that it does not have any Media Tech
9 documentation at all, or is it simply Vizio's
10 position that we should go get it directly
11 from Media Tech, and that you're not going to
12 produce it?

13 MR. MCCRUM: This is Ryan McCrum.

14 Well, Tom, you prefaced this by, "I
15 am not going to get into alleged deficiencies
16 in Vizio's production," and then you rambled
17 on about all of these alleged deficiencies.
18 So I think we all know what we're here to talk
19 about today.

20 This is a meet-and-confer on the
21 deficiencies in Sony's discovery responses.
22 So I don't want to get into your allegations.
23 You have asked for a meet-and-confer on those
24 issues, and I'm happy to talk to you about
25 those after we have considered your letter,

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2 and after we responded with our own letter, if
3 a meet-and-confer is still necessary during
4 that meet-and-confer.

5 But what I will say, Tom -- and we
6 have told you this numerous times -- we have
7 given you all the documents that we have in
8 our possession that are relevant and
9 responsive. We do not have source code. We
10 are double and triple checking that to be sure
11 because this is obviously a sensitive issue
12 with you, but we have asked, we have looked as
13 hard as we can for it, we will continue to,
14 but it shouldn't be a surprise to you, Tom,
15 given Vizio's position and its business, that
16 it doesn't have the source code.

17 We have told you numerous times you
18 need to go to Media Tech to get that. We have
19 noticed that Sony has subpoenaed everyone
20 under the sun except Media Tech, even though
21 Media Tech supplies over 90 percent of the
22 chips used in Vizio's products.

23 So you're barking up the wrong tree.
24 You need to go to Media Tech.

25 We have asked you numerous times:

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2 Do you plan to Subpoena Media Tech? I ask you
3 again, do you plan to Subpoena Media Tech?

4 MR. PEASE: The answer is procedurally, I
5 don't know if a Subpoena is going to be the
6 format that Sony uses to get documents from
7 medical. Media Tech is a Taiwanese company
8 with a California office, and one concern that
9 Sony has is not to be asking Media Tech for
10 documents that Vizio engineers have access to
11 in the ordinary course of business.

12 So I have noticed that your last
13 sentence was very carefully worded to say,
14 "It's not in Vizio's possession." But the
15 case law doesn't limit your discovery
16 obligations to documents that are
17 quote-unquote "in Vizio's possession." It's
18 documents in Vizio's possession, custody and
19 control, and it's going to include documents
20 that are made available to Vizio. It's also
21 going to include -- you know, if Media Tech
22 has made available documents to Vizio's
23 counsel, you know, as part of your
24 representation of this case, you know, those
25 are subject to our document requests too, and

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2 we expect you to produce it.

3 MR. McCRUM: They haven't made them
4 available to us. We don't have them. Media
5 Tech has them.

6 And your concern about: You know,
7 we haven't decided where we're going to get
8 these from, we're going to try to get these
9 through Vizio, that hasn't stopped you from
10 subpoenaing all these other companies.

11 If your approach was that you want
12 to get to these documents through Vizio, why
13 did you go Subpoena everyone else? They are
14 in the same position.

15 So you have got to go to Media Tech.
16 We are running out of time. You guys have
17 imposed this aggressive schedule. We have a
18 trial set for January. We are several months
19 into discovery, we are more than eight months
20 after you filed your Complaint, and there is
21 no effort whatsoever from Sony to get these
22 documents from the people -- the company that
23 has them. It's Media Tech. I told you a
24 million times. You need to go there.

25 So I suggest you do what you have

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2 done with all these other companies and
3 subpoena the U.S. presence Media Tech and get
4 the information that you're trying to get from
5 us. We don't have it. As you know they have
6 got an office in California. They got an
7 office in Austin, Texas. They have got an
8 office in Boston.

9 Go do what you did with these other
10 companies and subpoena those U.S. entities.
11 But, you know, I just can't -- I don't know
12 why you're not going to the company that
13 supplies over 90 percent of our chips, and yet
14 you spend all this time and energy on these
15 other third parties.

16 MR. PEASE: First of all, I disagree with
17 your characterization. I am going to ask you
18 about the same question about AmTran, namely,
19 you know, is it Vizio's position that it is
20 not going to produce AmTran documents that are
21 in Vizio's possession or to which Vizio
22 engineers have access in the ordinary course
23 of business?

24 MR. McCRUM: Look, Tom, we have talked
25 about this enough already. These are issues

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2 raised in your letters relating to your meet
3 and confer, and this is not the right time to
4 talk about it.

5 MR. PEASE: The reason I bring it up is
6 you said we're at an impasse with respect to
7 the information -- I read your letter again --
8 with respect to the information set forth in
9 Sony's User Manuals.

10 We want to know: What is the
11 impasse? What additional information from our
12 User Manuals do you think we haven't disclosed
13 at this point?

14 MR. MCCRUM: This is Ryan McCrum.

15 The issue has always been, Tom, that
16 these Claim Charts just basically throw
17 everything but the kitchen sink at Vizio
18 without any effort to specifically identify
19 how each limitation is satisfied by the
20 various portions of these User Manuals and
21 other documents.

22 The problem is you are pointing to,
23 you know, a dozen different things for each
24 claim limitation, all of which are different,
25 and there is no indication from your Claim

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2 Charts which of those dozen things you're
3 relying on as satisfying claim limitations,
4 and for many of the claim limitations, it's
5 the same dozen things over and over again.

6 So we don't know from one limitation
7 to another what Sony is claiming is satisfying
8 these claim limitations. That has been our
9 problem from day one.

10 Yes, we appreciate the fact that you
11 have gone back and tried to supplement, and
12 you have said you're going to supplement --
13 the first supplementation, by the way, just so
14 the record is clear, was wholly
15 nonsubstantive. All you did was revise a
16 couple of Bates numbers. There was no
17 substantive change at all, so that one doesn't
18 even count.

19 But the point is you have not
20 specifically addressed that concern, which has
21 been the concerns since day one. That's why
22 Vizio feels we are at an impasse. We have
23 asked for that numerous times, and it has not
24 been sufficiently addressed by Sony, and there
25 is no reason to believe that there will be,

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2 and we deep dragging this out further and
3 further. Now, you know, we're four months
4 after we served these things, and we still
5 don't feel like we have had an adequate
6 response.

7 So at the end of the day we feel we
8 are at an impasse. We are considering our
9 options right here. Quite candidly, I don't
10 know if it's going to be a Motion to Compel.
11 The other thing, which should be no secret to
12 you, is a Rule 11 motion, and you will see --
13 I want to raise this today -- we are serving a
14 30(b)(6) notice on Sony, and the first topic
15 of that is going to be the Rule 11 basis for
16 making these infringement allegations.

17 And while we are willing to work
18 with Sony on dates for depositions, I want it
19 to be clear to Sony that that is one that we
20 want as early as possible.

21 The others, you know, we can work
22 around people's schedules, but that is one
23 that we're going to be pushing to get as early
24 as we can. So that's where we stand on this
25 one. You know, I don't have anything further

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2 to say on it.

3 MR. PEASE: Obviously we disagree.

4 Go ahead, I am done.

5 MR. KENNEDY: Ryan, this is Todd Kennedy.

6 I think part of the issue is that the only
7 information that Sony has had to include in
8 these Claim Charts so far has been the User
9 Manuals, and inherently User Manuals are a
10 broad overview of the product. So it's a
11 little disingenuous for Vizio to complain that
12 the User Manual information in these Claim
13 Charts is not specific enough.

14 If Vizio wants more specific
15 information, then it should just wait until
16 the end of the month when Sony includes
17 information from the Service Manuals, which by
18 their nature are a little more specific.

19 And, again, Sony has promised to
20 supplement these Claim Charts after it has
21 inspected Vizio's products and after it has
22 received some source code and information
23 about the processors and Vizio televisions.

24 So if the complaint is that the
25 Claim Charts are not specific enough and don't

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2 identify the features specifically enough,
3 then Vizio should just wait until Sony has had
4 an opportunity to supplement.

5 MR. MCCRUM: This is Ryan McCrum. That's
6 fine. And, again, like I said, there is two
7 issues here. There is the issue of, you know,
8 our motion -- our potential Motion to Compel
9 more sufficient answers, and the second issue,
10 which we have been trying to get to the bottom
11 of since we first raised this, was whether or
12 not there was a sufficient basis to make these
13 allegations even to begin with. And we, based
14 on what we have seen, do not feel like, for at
15 least some of the patents, that there was a
16 sufficient basis to assert them against Vizio
17 at the time that this Complaint was filed.

18 So, you know, that's the other issue
19 that has been out there lurking from the very
20 beginning and that Vizio will continue to
21 investigate as we move forward.

22 MR. KENNEDY: This is Todd again.

23 I also wanted to respond to your
24 comment that the June 8 supplementation, which
25 is Sony's first supplementation of this

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2 interrogatory response was nonsubstantive. It
3 was actually a quite substantive response.
4 Sony looked at every single User Manual, again
5 at Vizio's request. And based on that review
6 of User Manuals Sony dropped entire Vizio
7 products from its claim of infringement of the
8 468 and 055 patent. So that was such a
9 substantive response that Vizio doesn't have
10 to worry about Sony bringing claims of
11 infringement against, you know, some of its
12 televisions, based on that -- based on that
13 interrogatory response.

14 MR. McCURUM: I think the record of the
15 actual supplementation speaks for itself on
16 that point, so we don't need to get into that
17 any further.

18 The other issue we talked about
19 already was with Media Tech. We asked you if
20 you folks are planning to subpoena Media Tech.
21 I am not sure I got a clear answer on that.

22 Is that in Sony's plans or not?

23 MR. PEASE: It's my understanding Sony
24 does intend to seek discovery from Media Tech.

25 MR. McCURUM: You don't know if that's

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2 through subpoena or some other informal means?

3 MR. PEASE: Or a different procedure
4 means.

5 MR. McCRUM: What other procedural means
6 are available, Tom?

7 MR. PEASE: Well, there's letters of
8 rogatory, and other procedural avenues
9 available to us.

10 My understanding is Sony is
11 considering those avenues.

12 MR. McCRUM: Let's move on to the next
13 issue in the various letters, which is the
14 issue about expert discovery and expert
15 reports.

16 And I know, Todd, that you indicate
17 in your letter that you don't think it's
18 appropriate or proper for us to be discussing
19 that today because it wasn't sufficiently
20 raised in my letter, but I'd like to make a
21 proposal anyway.

22 I am not asking you for a response
23 today, but you have offered to consider this
24 issue and talk about it more next week, and
25 that would be fine by us, but just to get the

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2 discussion rolling, our position on this --
3 our proposal, anyway, is that we exchange
4 opening expert reports on November 2nd, and
5 that we exchange rebuttal reports on
6 November 30th, and then we would do expert
7 depositions in the month of December, and
8 quite honestly, I don't know that there is --
9 I don't know of any other way to do this,
10 given the schedule because we obviously can't
11 do it any later than that because we have got
12 a trial in January. But we are willing to
13 consider doing these earlier, if that's -- you
14 know, if Sony would prefer. Go ahead.

15 MR. PEASE: Tom Pease here.

16 Yeah, we'll consider that and get
17 back to you. I think we'll take a look at the
18 court's Order of specifics of what the court
19 said, and consider that, along with the other
20 proposals you had made regarding limiting
21 Claim Charts and the like.

22 MR. MCCRUM: This is Ryan again. The
23 reason I put it in here was I didn't -- based
24 on past correspondence, it wasn't even clear
25 to me whether or not Sony was going to be

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2 willing to engage in formal expert reports and
3 discovery. So that's what I wanted to talk
4 about today. I put it in there to gauge
5 your -- take your temperature on your position
6 on that. And I mean, I wanted -- my plan
7 today was to figure out whether or not that
8 was even something that Sony was willing to
9 do.

10 MR. PEASE: This is Tom again.

11 We will talk to the client about
12 that and take a look at the Order again, and
13 we'll advance those discussions.

14 MR. McCRUM: Okay. Do you guys have a
15 date next week where you are available for
16 this?

17 MR. PEASE: I don't know off the top of
18 my head. Why don't we revisit it, if you want
19 to give me a call early next week, we can work
20 something out. My schedule is in flux right
21 now.

22 MR. McCRUM: Okay. The other thing that
23 we had in here in connection with that was our
24 proposal to limit the number of asserted
25 claims.

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2 And as we stated in our letter, our
3 proposal would be to limit the number of
4 asserted claims to three per patent for a
5 total of 30, and Vizio is proposing that Sony
6 be required to do that by September 1.

7 Do you have any reaction to that?

8 MR. PEASE: We'll give it some thought.

9 I think you said in your letter it was
10 unreasonable to have a hundred patent claims.
11 I don't know that there is anything inherently
12 unreasonable about a hundred patent claims. I
13 do agree with you to the extent we can cut
14 down the number of patent claims it probably
15 makes sense.

16 Three claims per patent does seem
17 somewhat arbitrary. It might make some sense
18 for some patents, not for others. But, you
19 know, as we continue to get discovery, as the
20 parties refine their positions, as we go
21 forward, you know, it should be easier for the
22 parties to determine whether a three claim per
23 patent limit makes sense, or whether it should
24 be more or less than that and come to some
25 agreement on that.

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2 MR. McCrum: Okay. Well, I don't mean to
3 be too pushy on this issue, but we do need an
4 answer on this because this is an issue that
5 we have had before Judge Klausner in the past
6 where there was relief granted for limiting
7 the number of asserted claims.

8 In fact, this has been -- I wouldn't
9 say -- I don't know how I would characterize
10 it, but this is an issue that has come up in
11 courts in our practice a number of times, and
12 the courts have been willing to limit the
13 number of asserted claims to -- to fewer than
14 what we're proposing here, and at an earlier
15 stage of the litigation than what we're
16 proposing here.

17 So I think because, you know, we're
18 moving ahead so quickly, and we have some very
19 tight deadlines, and we have got a trial date
20 so early, we need to do this quickly.

21 If we're going to do expert reports,
22 I think latest we can do them is November 2nd,
23 and we have got to give our experts enough
24 time to focus on the claims that are really
25 going to be at issue.

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2 And so I really want to do this, you
3 know, our proposal again is by September 1 to
4 limit the number of claims to three per
5 patent, and so I would ask that you guys get
6 back to us, you know, by next week with an
7 answer on whether or not that is acceptable
8 because, again, I am not trying to be bullish
9 here, but this is an issue that we would like
10 to get before this judge by the following week
11 if we can't resolve it by next week.

12 MR. PEASE: We'll give it some thought.
13 We will talk to our client. We'll give it
14 some thought, and we can discuss it more fully
15 next week.

16 MR. McCRUM: Okay. This is Ryan McCrum
17 again.

18 Let's move on to interrogatory
19 No. 19. As you know, that interrogatory seeks
20 Sony's bases for denying certain paragraphs of
21 Vizio's trade, libel and disparagement claims.

22 Todd, in your letter from last night
23 you offered to explain or elaborate on Sony's
24 reasons for standing on its objections, and I
25 am interested in hearing what you have to say

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2 on that.

3 MR. KENNEDY: I do have a couple of case
4 cites that I can give to you, and I think the
5 most efficient way is probably for me to give
6 you the cites, and then you can review them
7 and, you know, see whether you agree that the
8 interrogatory is improper.

9 MR. McCRUM: Okay. Could you do me a
10 favor, e-mail them to me. I know we have this
11 transcribed, but I don't know when we're going
12 to get the transcript, and I prefer to get the
13 right ones, rather than missing a number here
14 or there.

15 MR. KENNEDY: Sure, I'll do that as soon
16 as this conference is over.

17 MR. PEASE: Hey, Ryan, this is Tom. I
18 think I can give you a one-sentence
19 explanation of our position on it.

20 I don't know the cites off the top
21 of my head. Todd can send them to us later.

22 In a nutshell our position is that
23 this interrogatory is drafted improperly as a
24 matter of law in that it seeks all the bases
25 with respect to all those different paragraphs

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2 relating to the trade, libel, disparagement
3 claims. We have got case law support for
4 that. That's what Todd is going to send to
5 you after this call is over.

6 Although we're not obligated to do
7 so, you know, we're not unwilling to disclose
8 information relating to Sony's position with
9 respect to those trade, libel and
10 disparagement claims. So it's now Friday. If
11 you guys wanted to revise that interrogatory
12 to cut it down, make it more specific, you
13 know, by Monday or Tuesday, for example, we'd
14 be willing to answer that interrogatory, I
15 think as long as it's reasonable, within let's
16 say 14 days. So you don't have to answer that
17 yet, take a look at the cites Todd sends to
18 you, let us know if you agree and whether you
19 think it is something you could revise, but
20 our position is that it asks for so much
21 information, and it is so broad, you know,
22 it's the equivalent of many, many, many
23 interrogatories, and as such we have case law
24 support that says we don't need to answer a
25 question like that.

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2 MR. McCRUM: The objection really is to
3 you think that it is actually more than --
4 it's multiple interrogatories?

5 MR. PEASE: I think that's a part of it.
6 The overall scope, it's essentially asking us
7 to lay out on paper, you know, our entire case
8 with respect to many, many, many different
9 paragraphs set forth in our Answer. You know,
10 we looked into it, and there is case law that
11 says that's not a proper interrogatory.

12 But like I said, we are perfectly
13 willing to disclose information concerning
14 Sony's position relating to those Vizio
15 claims, and if you can come up with something,
16 you know, another more limited interrogatory
17 on the same topics, we'd be willing to answer
18 that within a limited period of time.

19 You know, we're not going to say:
20 You need to start counting the time period
21 over again and give us 30 days. We could do
22 it in less than 14 days.

23 MR. McCRUM: Okay.

24 MR. PEASE: That's all, just consider it.

25 MR. McCRUM: We'll definitely consider

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2 it. By representing that we'll consider it, I
3 am not agreeing by any means that I think our
4 interrogatory has issues, especially given the
5 interrogatories that both parties have been
6 serving in this case relating to hundreds of
7 products and hundreds of patent claims and,
8 you know, hundreds of pieces of prior art and
9 things like that.

10 I, quite frankly, I haven't looked
11 at the case law that you're referring to, but
12 I can think off the top of my head at least of
13 four or five interrogatories served on both
14 sides here that are in my view far more broad
15 and far more demanding than this one, where
16 this resistance to answer has not been raised
17 or brought up.

18 So I'll look -- I am glad to look at
19 case cites that you have. I am glad to
20 consider your proposal. I appreciate the
21 proposal. And we can get back to you, but the
22 last comment on this is either now or maybe in
23 your e-mail, Todd, if you could give me an
24 indication as to in what ways you would like
25 to see us narrow this because, you know, right

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2 now I am not certain what it is that you're
3 looking for, how you want us to change this,
4 and I'd like some guidance from you folks if
5 we could get that.

6 The last thing I want is to revise
7 it, and then you guys come back to me and say,
8 "Well, you know, this isn't any better."

9 MR. KENNEDY: I am pretty confident that
10 after you review these cases that you won't
11 need any further guidance.

12 MR. McCRUM: Okay.

13 Anything more on that one?

14 MR. PEASE: Not from our end.

15 MR. McCRUM: Why don't we move to
16 interrogatory No. 20.

17 As you are all well aware Sony
18 served an interrogatory asking us to set forth
19 our invalidity contentions for each of the
20 more than 100 asserted claims of each of the
21 10 asserted patents, and Vizio went through,
22 has analyzed a lot of prior art, selected the
23 references that it believes invalidate the
24 Sony asserted patents, provided detailed Claim
25 Charts on a limitation-by-limitation basis,

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2 indicating where within those prior art
3 references Vizio contends that each limitation
4 is found.

5 And so we have now served
6 interrogatory No. 20 seeking Sony's validity
7 contentions with regard to that prior art.
8 And you folks did not provide an answer.

9 Now I understand that you are now
10 agreeing to provide an answer by August 3rd,
11 and I am curious as to what type of answer we
12 can expect because the interrogatory asks you
13 to go through and provide a Claim Chart and
14 indicate for each limitation whether or not --
15 what specifically limitations you allege are
16 not in each of these pieces of prior art, and
17 your reasons why, and is that the type of
18 Claim Chart we can expect to receive on
19 August 3rd?

20 MR. PEASE: This is Tom.

21 Yeah, we are going to provide a
22 chart, and it is going to be I think
23 comparable to the type of response that Vizio
24 provided, you know, on noninfringement. You
25 went through and identified the limitations

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2 that were, in your view, met by the accused
3 products. We're preparing a chart of similar
4 scope and content in response to this
5 interrogatory.

6 And I will ask, are you planning to
7 supplement the corresponding Vizio
8 interrogatory before August 3rd to identify
9 additional references or withdraw references?

10 MR. MCCRUM: I don't know the answer to
11 that, Tom, but, I mean, we obviously dispute
12 the reasons why you didn't provide a response
13 when it was due. I mean, the way that we set
14 these out is any new references that we have
15 added to these charts that we have since
16 uncovered, we simply add another letter to the
17 chart and indicate what that prior art is.

18 And so there was no reason why we
19 shouldn't have received a response with regard
20 to the references that we had originally
21 identified. So, you know, I don't expect that
22 we are going to be supplementing again by
23 August 3rd. If you don't want us to, we'll
24 wait, you know --

25 MR. PEASE: No, no, it's not that. It's

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2 just the last time around our responses to
3 interrogatory No. 20 were due on the Monday
4 after the 4th of July weekend. Our offices
5 were closed on Friday, July 3rd. Late in the
6 evening of July 3rd you served a supplemental
7 response to our interrogatory 19, and we
8 didn't have any explanation of what material
9 had been added or taken away at that point.
10 There was no red line. And, in fact, I don't
11 think there has been a red line provided even
12 since then.

13 And based on your explanation, we're
14 proceeding without the benefit of a red line.
15 And the response we're preparing, and we will
16 serve on August 3 -- I suppose we will serve
17 it whether you supplement or not -- but if you
18 do supplement and do withdraw references, we'd
19 like you to point that out to us, you know,
20 either in the supplement itself or by e-mail
21 or by some means, so that we're not providing
22 analysis of references that are no longer
23 being asserted by Vizio with respect to a
24 particular Claim Chart.

25 MR. McCRUM: We'll let you know if we

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2 withdraw any, but moving forward, our plan --
3 and our plan was, for the convenience of Sony,
4 just to make it as easy as possible, when
5 we're adding references we're literally just
6 putting new letters in.

7 So if we do supplement moving
8 forward, we'll continue with that approach of
9 just adding the new letters, so it's clear,
10 you know. If the last supplement left off at
11 letter C, any new references will start with
12 letter D.

13 The other comment I want to make is
14 you folks have complained about our
15 noninfringement contentions, and, in fact,
16 asked for a meet-and-confer on that, and now,
17 if I understand you correctly, your plan is to
18 provide a response that is similar to, in the
19 same format as our noninfringement
20 contentions.

21 So, you know, what is Sony's
22 position on our noninfringement contentions?
23 Is it your position that that type of response
24 is adequate, or, you know -- we have asked
25 you: Give us the identification of the

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2 limitations that are missing, and the
3 interrogatory also asks for an explanation as
4 to why Sony contends that they are missing.
5 But it sounds like your plan is to just list
6 the limitations that you contend are missing
7 from the patents; is that correct, and if so,
8 is Sony now of the position that that is an
9 adequate response?

10 MR. PEASE: This is Tom again.

11 Number one, I think we should
12 discuss Vizio's responses to Sony's
13 interrogatories next week during the
14 appropriate meet-and-confer for it, and you
15 know, we're not going to play games here, you
16 know, tit for tat.

17 What we have done in the time
18 allotted to us is go through and provide Claim
19 Charts and identify what is missing. If you
20 think additional information needs to be set
21 forth, you know, we'll consider that as we go
22 forward, but, you know, we're not going to tie
23 one side's answers to the -- your side's
24 answers to the responses that we give.

25 We are going to discuss our position

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2 with respect to your noninfringement charts
3 next week. You know, those were served a lot
4 earlier in the case. You know, we have a
5 separate set of issues with respect to them
6 that we'll go through next week when we're
7 prepared to do so.

8 MR. McCRUM: This is Ryan.

9 I appreciate and understand that the
10 issues with regard to our respective discovery
11 responses need to be dealt with separately,
12 but I also think that it would be extremely
13 unfair and inconsistent, as -- you know, when
14 we have our meet-and-confer, to the extent it
15 goes forward, you are telling us that our
16 responses are inadequate, when -- if I am
17 hearing you correctly -- you're proposing to
18 do the same thing.

19 So I just want to make sure we're
20 all on the same page here when we talk next
21 week, to the extent that goes forward.

22 MR. KENNEDY: To an extent you're
23 comparing apples and oranges. Validity and
24 infringement are two completely different
25 kinds of analysis. And the fact is that Vizio

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2 has a lot of information about how its own
3 products work, and that contrasts with
4 validity where both sides have equal access to
5 the prior art.

6 So the kind of responses that you
7 expect from Sony could be different from the
8 kinds of responses that Sony legitimately
9 expects from Vizio on infringement.

10 MR. McCRUM: Well, I quite frankly don't
11 understand how it is that much different.
12 It's -- you have got the set of claims, and
13 you are reading something on those claims,
14 whether it's a product or something disclosed
15 in the prior art, it's the same type of
16 analysis. So I don't agree that it's that --
17 it is apples and oranges, as you suggest.

18 So we'll see what we get on
19 August 3rd, and we can talk about this more
20 next week, if that's something that you folks
21 still want to move forward with.

22 MR. PEASE: Sounds good.

23 Is that everything you have?

24 MR. McCRUM: No, we have got two more
25 issues I think will be relatively quick.

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2 Third-party subpoenas. You indicate that --

3 Todd, you indicated in your letter
4 that you will be producing any information you
5 have on those with your next major production.
6 You know, we take issue with that for a couple
7 of reasons.

8 Number one, we don't know when
9 you're going to make your next, quote-unquote,
10 "major production," and number two, I am not
11 certain what you mean by "major production."
12 So you know our position is that Sony should
13 be providing any documents that it receives in
14 response to those subpoenas, as well as any
15 communications that Sony is having with
16 these third parties, on a rolling basis as
17 soon as they are received by Sony.

18 I don't think that it's fair for us
19 to -- for you to have these documents or
20 communications and to, you know, wait to
21 produce them when you're making,
22 quote-unquote, "major productions."

23 So we would ask that you, to the
24 extent you have any of that stuff, you produce
25 it to us immediately.

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2 MR. KENNEDY: I think Peter probably has
3 a better idea of when the next production is
4 going to be.

5 MR. KLIVENS: Ryan, actually a lot of
6 that might have been -- this is a very minor
7 point -- but I think we produced a document
8 earlier, and then we reused that number. So
9 we need to reproduce that. It was a
10 single-page document that was in our
11 interrogatory responses --

12 THE REPORTER: Wait, I'm having trouble
13 understanding you.

14 MR. KLIVENS: We have produced a
15 single-page document with some interrogatory
16 responses in June, and we accidentally used
17 that number. We're going to reproduce that
18 number again.

19 In this letter I think we wanted to
20 avoid confusion by saying "the next
21 production," so we said "major." And the
22 major one, we are preparing some more
23 documents. It will be by the end of the
24 month. So if you want to know, that's what it
25 is.

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2 MR. McCRUM: This is Ryan McCrum again.

3 Can we agree that moving forward
4 with regard to third-party-produced documents
5 that they will be produced within a reasonable
6 time after receiving and processing them, and
7 that we won't have to wait for some unknown
8 time in the future to get them?

9 MR. KLIVENS: Yeah, I think "reasonable
10 time" makes sense. That's agreeable.

11 MR. PEASE: This is Tom.

12 That, I think, is this the approach
13 we have taken, and we assume you guys will do
14 the same.

15 MR. McCRUM: Yeah, absolutely.

16 And then the other thing is to the
17 extent that you have any communications with
18 these third parties, either by letter or
19 e-mail, we would expect that those would be
20 included with the production.

21 Is that something that Sony is going
22 to be producing as well?

23 MR. PEASE: Subject to objections, sure.

24 MR. KENNEDY: This is Todd.

25 Just to be clear, is that what Vizio

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2 is agreeing to do?

3 MR. McCRUM: Yeah, I mean, we haven't
4 subpoenaed anybody yet.

5 MR. PEASE: This is Tom again.

6 Your question went beyond that. It
7 was communications that you guys have had with
8 third parties. So if you have been in contact
9 with AmTran or Media Tech or other companies,
10 you know, if we're going to produce that kind
11 of communication, we expect Vizio to do the
12 same.

13 MR. McCRUM: Well, you do -- you raise a
14 good -- you raise an important issue that I
15 was going to -- and you'll see I have raised
16 in one of my letters that I am going to be
17 sending out today -- and that is with regard
18 to e-mail communications, and, Peter, in one
19 of our prior meet-and-confers you referenced
20 an agreement between the parties not to
21 produce electronically maintained e-mails, and
22 our understanding is that Jim Wamsley, and I
23 think it was Ed DeFranco had reached that
24 agreement, at least orally, and we have
25 been -- we have been proceeding under that

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2 agreement. It seems that Sony has been
3 proceeding under that agreement as well
4 because we haven't seen any e-mail
5 correspondence from the more than 20 listed
6 inventors on the patents at issue, or other
7 e-mail correspondence for that matter, other
8 than the ones you produced relating to the
9 standards that were already in the personal
10 files of your people.

11 So I want to get -- I want to make
12 sure everyone is clear on where we stand on
13 this stuff.

14 Is the agreement that we are going
15 to be producing e-mails or not producing
16 e-mails? Our understanding is that we are
17 not. Is that Sony's understanding?

18 MR. PEASE: This is Tom.

19 I actually need to get back to you
20 on that. I know there have been different
21 agreements for the different cases, and I
22 don't recall, sitting here, what agreements we
23 made specifically for this case, but we'll get
24 back to you very early next week on that.
25 Probably Monday.

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2 MR. McCRUM: Okay.

3 MR. PEASE: Maybe even today, but I would
4 expect we would get back to you no later than
5 Monday.

6 MR. McCRUM: You'll see it's also the
7 subject of my letter that I'll be sending out
8 today, and I think the answer to your
9 question, then, about whether or not the
10 parties are going to be producing, you know,
11 e-mails and things of that nature will, you
12 know -- it will be -- it will depend on what
13 the answer to that is.

14 And our position is that we have
15 reached an agreement regarding e-mail
16 correspondence. And, like I said, I think
17 that -- we thought that agreement was
18 reflected in the fact that we had seen hardly
19 any e-mails from Sony as well.

20 MR. KLIVENS: One last point. There are
21 e-mails that have been produced, in terms of
22 negotiations with other parties regarding the
23 patents. We have gotten a lot of those.

24 MR. McCRUM: Right, I don't know, Peter,
25 are those e-mails that were -- as you

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2 mentioned in the last meet-and-confer, were
3 those e-mails that were printed out and that
4 were in people's files, or did you guys go to
5 the electronic files of those people and
6 produce those?

7 MR. KLIVENS: We'd have to check. We can
8 get back to you.

9 MR. MILLER: Peter, speak up a little
10 bit, please.

11 MR. PEASE: We'd have to check on that,
12 and we can get back to you in the context of
13 getting back to you on Monday, as Tom said
14 already.

15 MR. McCRUM: Okay, but as far as, you
16 know, e-mails in electronic files like that
17 from inventors, we haven't seen any of that.
18 And you don't disagree with that, do you,
19 Peter?

20 MR. KLIVENS: No, I don't disagree with
21 that. But that's in large part because many
22 of these are quite old.

23 MR. McCRUM: Let us know what your
24 thoughts are on that next week, and we can
25 revisit the issue about whether or not these

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2 things do, in fact, need to be produced, but
3 with that said, I mean, to the extent that you
4 have correspondence in non-e-mail form,
5 letters and things like that, then we would
6 ask that those obviously be produced.

7 MR. PEASE: Okay.

8 Is that everything?

9 MR. McCRUM: We have got one more thing,
10 which is the Westinghouse documents. And,
11 again, Todd's letter from last night indicated
12 that Sony has now produced all the documents
13 requested by Vizio from the Westinghouse
14 litigation, and I didn't see a production
15 letter. Maybe I missed it. Did you guys send
16 one out?

17 MR. KLIVENS: I think it went out on the
18 16th. Is that yesterday? You should have it
19 by now.

20 MR. McCRUM: I think we have it. I think
21 we just got it today. I touched base with
22 Steve during the meet-and-confer here. He
23 said we have got something come in today, but
24 I didn't see a production letter that went
25 along with it.

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2 You know, I wasn't aware of that
3 until today, but obviously we haven't had a
4 chance to look at that to see what is in
5 there, but can you give us a sense of what is
6 in there?

7 Does it include all the discovery
8 requests and limited to nonconfidential
9 information, or have you now obtained the
10 consent of Westinghouse to produce
11 confidential discovery responses?

12 MR. KLIVENS: This is Peter.

13 It contains confidential and
14 nonconfidential. We did obtain consent
15 quickly once we did it, as we said we would.

16 MR. McCRUM: Okay. It includes -- so it
17 has got discovery responses, and to the extent
18 there were any expert reports or anything,
19 those are in there as well?

20 MR. KLIVENS: There were no expert
21 reports in that litigation.

22 MR. McCRUM: All right. We will take a
23 look at those.

24 MR. KENNEDY: Ryan, this is Todd. I
25 wanted to clarify, you should have received

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2 that production cover letter via e-mail on
3 Wednesday the 15th at about 9:20 p.m. Pacific.

4 MR. McCRUM: Okay. I must have missed
5 it. I didn't see it come across the airwaves.
6 Who was that from? From you or Peter?

7 MR. KLIVENS: Actually, from
8 Heather Belville.

9 MR. CORR: Okay. This is Steve Corr.
10 Just to be clear, the disk I received today,
11 Peter, is the disk that contains those
12 materials?

13 MR. KLIVENS: That's correct. There's a
14 few other things on there too, but that's the
15 Westinghouse stuff.

16 MR. CORR: Okay.

17 MR. McCRUM: This is Ryan.

18 I think that's everything that I had
19 on our agenda for the day.

20 (The Meet and Confer was
21 concluded at 12:53 p.m.)

22 * * *

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2 REPORTER'S CERTIFICATE

3 OF

4 CERTIFIED SHORTHAND REPORTER

5
6 * * * * *

7
8 I, THE UNDERSIGNED CERTIFIED SHORTHAND
9 REPORTER, IN AND FOR THE STATE OF CALIFORNIA,
10 DO HEREBY CERTIFY: THAT THE FOREGOING
11 PROCEEDINGS WERE TAKEN BEFORE ME AT THE TIME
12 AND PLACE THEREIN SET FORTH, AT WHICH TIME THE
13 WITNESS WAS PUT UNDER OATH BY ME; THAT THE
14 TESTIMONY OF THE WITNESS AND ALL OBJECTIONS AT
15 THE TIME OF THE PROCEEDINGS WERE RECORDED
16 STENOGRAPHICALLY BY ME AND WERE THEREAFTER
17 TRANSCRIBED UNDER MY DIRECTION; THAT THE
18 FOREGOING IS A TRUE RECORD OF THE TESTIMONY
19 AND OF ALL OBJECTIONS MADE AT THE TIME OF THE
20 PROCEEDINGS.

21 IN WITNESS WHEREOF, I HAVE SUBSCRIBED MY NAME

22
23 DATE: 7/29/09

24 _____
25 LESLIE L. WHITE, CSR NO. 4148